

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/09/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Joel Kleefisch (608) 266-8551**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - other  
Drunk Driving - penalties**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kleefisch@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Releasing persons after OWI offenses

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**Instructions:**

07-4372

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/10/2009	wjackson 01/14/2009		_____ _____			S&L Crime
/1	sbasford 02/05/2009		phenry 01/15/2009	_____ _____	sbasford 01/15/2009	sbasford 02/05/2009	

FE Sent For: **"1" @ intro. 2/24/09** <END>

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/?	phurley	1 WLJ 1/14	1/15 ph	1/15 ph/jk			
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FE Sent For:

<END>

## 2007 BILL

LPS: Please  
DNFSoon  
1-10-09

Regen

- 1 AN ACT to renumber and amend 969.035 (1); to amend 346.65 (2) (am) 3.,  
 2 346.65 (2) (am) 4., 346.65 (2) (am) 5., 346.65 (2) (am) 6., 346.65 (2) (am) 7.,  
 3 938.535, 968.07 (1m), 969.01 (2) (a), (b), (c) and (d), 969.035 (3) (a) and (b) and  
 4 969.035 (6) (a); and to create 968.077, 968.085 (9), 969.01 (2) (f), 969.035 (1) (a)  
 5 and 969.035 (2) (c) of the statutes; relating to: release of persons who commit  
 6 operating while intoxicated offenses and providing penalties.

*Analysis by the Legislative Reference Bureau*

Under current law, a person who commits a third offense related to drunken driving or driving under the influence of an intoxicant or other drug (OWI) must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year. A person who commits a fourth OWI must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year. A person who commits a fifth or sixth OWI is guilty of a Class H felony and may be fined not less than \$600 nor more than \$10,000 and imprisoned for not less than six months nor more than six years, or both. A person who commits a seventh, eighth, or ninth OWI is guilty of a Class G felony and may be fined not more than \$25,000 or imprisoned for not more than ten years, or both. A person who commits a tenth or subsequent OWI is guilty of a Class F felony and may be fined not more than \$25,000 or imprisoned for not more than 12 years and six months, or both. \*

Under this bill, a person who commits a third OWI is guilty of a Class H felony, although the person must be fined at least \$600 but not more than \$2,000 and must

**BILL**

be imprisoned for at least 90 days. A person who commits a fourth OWI is guilty of a Class G felony, although the person must be fined at least \$600 but not more than \$2,000 and must be imprisoned for at least one year. A person who commits a fifth or sixth OWI is guilty of a Class F felony, although the person must be fined at least \$600 and must be imprisoned for at least one year. A person who commits a seventh, eighth, or ninth OWI is guilty of a Class E felony, and a person who commits a tenth or subsequent OWI is guilty of a Class D felony. These persons are subject to the current law penalties for the felony classification. <sup>5</sup>

In addition, this bill requires a law enforcement officer to arrest a person if the officer has reasonable grounds to believe that the person is committing a third OWI. The bill grants the circuit court the authority to deny pretrial release to a person who is charged with certain felony OWIs if the person has a previous conviction for a felony OWI. The bill also prohibits the release of a person convicted of a third OWI before the person begins to serve any period of incarceration imposed for the OWI.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 346.65 (2) (am) 3. of the statutes is amended to read:

2           346.65 (2) (am) 3. Except as provided in pars. (cm), (f), and (g), is guilty of a  
3           Class H felony and, notwithstanding s. 939.50 (3) (h), shall be fined not less than  
4           \$600 nor more than \$2,000 and imprisoned for not less than 30 90 days ~~nor more than~~  
5           ~~one year in the county jail~~ if the number of convictions under ss. 940.09 (1) and 940.25  
6           in the person's lifetime, plus the total number of suspensions, revocations, and other  
7           convictions counted under s. 343.307 (1), equals 3, except that suspensions,  
8           revocations, or convictions arising out of the same incident or occurrence shall be  
9           counted as one.

10           **SECTION 2.** 346.65 (2) (am) 4. of the statutes is amended to read:

**BILL**

1           346.65 (2) (am) 4. Except as provided in pars. (f) and (g), is guilty of a Class G  
2   felony and, notwithstanding s. 939.50 (3) (g), shall be fined not less than \$600 nor  
3   more than \$2,000 and imprisoned for not less than ~~60 days nor more than~~ one year  
4   ~~in the county jail~~ if the number of convictions under ss. 940.09 (1) and 940.25 in the  
5   person's lifetime, plus the total number of suspensions, revocations and other  
6   convictions counted under s. 343.307 (1), equals 4, except that suspensions,  
7   revocations or convictions arising out of the same incident or occurrence shall be  
8   counted as one.

9           **SECTION 3.** 346.65 (2) (am) 5. of the statutes, as affected by 2007 Wisconsin Act  
10   111, is amended to read:

11           346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H  
12   F felony and, notwithstanding s. 939.50 (3) (f), shall be fined not less than \$600 and  
13   imprisoned for not less than ~~6 months~~ one year if the number of convictions under  
14   ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of  
15   suspensions, revocations and other convictions counted under s. 343.307 (1), equals  
16   5 or 6, except that suspensions, revocations or convictions arising out of the same  
17   incident or occurrence shall be counted as one.

18           **SECTION 4.** 346.65 (2) (am) 6. of the statutes, as created by 2007 Wisconsin Act  
19   111, is amended to read:

20           346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G E felony  
21   if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
22   plus the total number of suspensions, revocations, and other convictions counted  
23   under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or  
24   convictions arising out of the same incident or occurrence shall be counted as one.

## BILL

## SECTION 5

1           **SECTION 5.** 346.65 (2) (am) 7. of the statutes, as created by 2007 Wisconsin Act  
2           111, is amended to read:

3           346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F D felony  
4           if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
5           plus the total number of suspensions, revocations, and other convictions counted  
6           under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or  
7           convictions arising out of the same incident or occurrence shall be counted as one.

8           **SECTION 6.** 938.535 of the statutes is amended to read:

9           **938.535 Early release and intensive supervision program; limits.** The  
10          department may establish a program for the early release and intensive supervision  
11          of juveniles who have been placed in a juvenile correctional facility or a secured  
12          residential care center for children and youth under s. 938.183 or 938.34 (4m). The  
13          program may not include any juveniles who have been placed in a juvenile  
14          correctional facility or a secured residential care center for children and youth as a  
15          result of a delinquent act involving the commission of a violent crime as defined in  
16          s. 969.035 (1) (b), but not including the crime specified in s. 948.02 (1).

17          **SECTION 7.** 968.07 (1m) of the statutes is amended to read:

18          968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest  
19          a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128  
20          (1) (b), ~~or~~ 968.075 (2) (a) or (5) (e), or 968.077 (1).

21          **SECTION 8.** 968.077 of the statutes is created to read:

22          **968.077 Operating while intoxicated; arrest.** (1) Notwithstanding s.  
23          968.07 (1), a law enforcement officer who has reasonable grounds to believe that a  
24          person is committing or has committed a violation of s. 346.63 (1) or (2), 940.09 (1),  
25          or 940.25 and has 2 or more prior convictions, suspensions, or revocations, as counted

**BILL**

1 under s. 343.307 (1), shall arrest the person and take the person into custody.  
2 Suspensions, revocations, or convictions arising out of the same incident or  
3 occurrence shall be counted under this section as one suspension, revocation, or  
4 conviction.

5 (2) Unless s. 968.08 applies, a law enforcement officer may not release a person  
6 whose arrest is required under sub. (1) before the initial appearance under s. 970.01.

7 **SECTION 9.** 968.085 (9) of the statutes is created to read:

8 968.085 (9) INAPPLICABILITY TO OPERATING WHILE INTOXICATED CASES. A law  
9 enforcement officer may not issue a citation to a person for an offense if the officer  
10 is required to arrest the person for that offense under s. 968.077 (1).

11 **SECTION 10.** 969.01 (2) (a), (b), (c) and (d) of the statutes are amended to read:

12 969.01 (2) (a) Release Except as provided in par. (f), release pursuant to s.  
13 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction  
14 and prior to sentencing or the granting of probation.

15 (b) ~~In~~ Except as provided in par. (f), in misdemeanors, release may be allowed  
16 upon appeal in the discretion of the trial court.

17 (c) ~~In~~ Except as provided in par. (f), in felonies, release may be allowed upon  
18 appeal in the discretion of the trial court.

19 (d) ~~The~~ Except as provided in par. (f), the supreme court or a justice thereof or  
20 the court of appeals or a judge thereof may allow release after conviction.

21 **SECTION 11.** 969.01 (2) (f) of the statutes is created to read:

22 969.01 (2) (f) A person convicted of an offense under s. 346.63 (1) or (2), 940.09  
23 (1), or 940.25 who has 2 or more prior convictions, suspensions, or revocations, as  
24 counted under s. 343.307 (1), may not be released under this chapter before he or she  
25 serves any term of imprisonment required or imposed in connection with the



**BILL****SECTION 11**

1 conviction. Suspensions, revocations, or convictions arising out of the same incident  
2 or occurrence shall be counted under this paragraph as one prior suspension,  
3 revocation, or conviction.

4 **SECTION 12.** 969.035 (1) of the statutes is renumbered 969.035 (1) (intro.) and  
5 amended to read:

6 969.035 (1) (intro.) In this section, ~~“violent;~~

7 (b) “Violent crime” means any crime specified in s. 940.01, 940.02, 940.03,  
8 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195 (5), 940.21, 940.225 (1),  
9 940.23, 941.327, 948.02 (1) or (2), 948.025, 948.03, or 948.085.

10 **SECTION 13.** 969.035 (1) (a) of the statutes is created to read:

11 969.035 (1) (a) “Felony involving serious bodily harm to another or the threat  
12 of serious bodily harm to another” means a felony under s. 346.63 (1) or (2), 940.09  
13 (1), or 940.25.

14 **SECTION 14.** 969.035 (2) (c) of the statutes is created to read:

15 969.035 (2) (c) A person accused of committing a felony involving serious bodily  
16 harm to another or the threat of serious bodily harm to another if the person has at  
17 least one previous conviction for a felony involving serious bodily harm to another  
18 or the threat of serious bodily harm to another.

19 **SECTION 15.** 969.035 (3) (a) and (b) of the statutes are amended to read:

20 969.035 (3) (a) Alleges that the defendant is eligible for denial of release under  
21 sub. (2) (a) ~~or~~, (b), or (c).

22 (b) Provides a copy of the complaint charging the commission or attempted  
23 commission of the present offense specified in sub. (2) (a) ~~or~~, (b), or (c).

24 **SECTION 16.** 969.035 (6) (a) of the statutes is amended to read:

# BILL

969.035 (6) (a) The state has the burden of going forward and proving by clear and convincing evidence that the defendant committed an offense specified under sub. (2) (a), ~~or that the defendant committed or attempted to commit a violent crime subsequent to a prior conviction for a violent crime, or that the defendant committed a felony involving serious bodily harm to another or the threat of serious bodily harm to another and has at least one previous conviction for a felony involving serious bodily harm to another or the threat of serious bodily harm to another.~~

**SECTION 17. Initial applicability.**

(1) This act first applies to violations committed or refusals occurring on the effective date of this subsection, but does not preclude the counting of other convictions, suspensions, or revocations as prior convictions, suspensions, or revocations for purposes of administrative action by the department of transportation, sentencing by a court, or revocation or suspension of motor vehicle operating privileges.

(END)

**Basford, Sarah**

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**From:** Lindstedt, Daniel  
**Sent:** Thursday, February 05, 2009 1:25 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1427/1 Topic: Releasing persons after OWI offenses  
**Importance:** High

Please Jacket LRB 09-1427/1 for the ASSEMBLY.